IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7109 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAVITABEN RAMBABUSINGH CHAUHAN - Petitioner(s)
Versus
DISTRICT EDUCATION OFFICER & 3 - Respondent(s)

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Appearance :
MR DP VORA for the Petitioner
MS REETA CHANDARANA, A.G.P. for Respondent Nos. 1,2 and 3.
MR MURALI N DEVNANI for Respondent No. 4

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/03/2006

ORAL JUDGMENT

1. Rule. Ms. Reeta Chandarana, learned Assistant Government Pleader waives service of Rule on behalf of Respondent Nos. 1,2 and 3. Mr. Murali Devnani, learned Advocate waives service of Rule on behalf of Respondent

No.4. At the joint request of the learned Advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner who is a retired school teacher, has prayed for being paid pensionary benefits as per the Government Policy declared by Government Resolution dated 06.04.2002.

2.1 Short facts leading to the present petition are that the petitioner was working as a Primary school teacher and employed by respondent No.4. She joined her services on 21.06.1971. She continued to discharge her duties till 31.05.1998. It appears that the petitioner had sought permission to retire on voluntary retirement basis. Said permission was granted. Thus, the termination of the service contract of the petitioner with effect from 31.05.1998 was not on account of superannuation but due to voluntary retirement. Request made by the petitioner was granted by the employer.

2.2 On 06.04.2002, the State Government issued Resolution by which pension was made available to the teaching staff of the aided recognized primary schools.

Resolution dated 06.04.2002 is produced at Annexure – A by the petitioner. If one peruses the contents of the Resolution dated 06.04.2002, it would emerge that the Government decided to provide pension scheme for the staff of the aided recognized primary schools by the said resolution. The pension scheme was made effective from 01.01.1997. It was provided that those members of the teaching staff who are in service as on 01.01.1997, shall have to exercise option whether to switch over to the pension scheme. Such option shall have to be exercised within a period of one year from the date of Resolution. Option once exercised shall be final. It was further provided that for some employees who were in service as on 01.01.1997, but have retired prior to the date of Resolution, have to exercise similar option within a period of six months from the date of Resolution.

2.3 It was further provided that those employees who opt for pension scheme shall have to surrender the employer's contribution to the EP Fund with the Government within a period of one year. It was further provided that those employees who joined the service after 01.01.1997, they shall be automatically governed by the pension scheme. It was further provided in Para 7 of

the said Resolution that the retirement age of teaching staff covered by the pension scheme will be as provided in the B.C.S. Rules for the Government employees. The Government Resolutions issued from time to time will be applicable to such employees also.

3. It appears that the petitioner exercised her option for switching over to the pension scheme on 17.07.2002. Despite the said Resolution and despite the petitioner opted for pension scheme, she did not receive pensionary benefits. The petitioner has therefore, filed the present petition seeking pensionary benefits from the respondents. It is the case of the petitioner that she retired as teaching staff at Primary School which was an aided affiliated primary school. The Government Resolution dated 06.04.2002, therefore, gave an option to her to switch over to the pension scheme, she exercised the option within time frame. The respondents therefore, could not have denied pensionary benefits to her.

4. On the other hand the stand of the Government as emerging from the affidavit-in-reply dated 20.09.2005 filed by respondent No.1 is that the petition is not governed by the Government Resolution dated 06.04.2002.

The reason for this assertion is that according to the respondents since the petitioner had retired on voluntary retirement basis, her case is not covered under the Government Resolution.

5. From the above recording of the events, it can be seen that by Government Resolution dated 06.04.2002, the State Government made pension scheme applicable to the teaching staff of aided affiliated primary schools. The scheme was applicable with effect from 01.01.1997. For the employees who were in service on 01.01.1997 but retired prior to date of the resolution, were given option to switch over to pension scheme. Such option was to be exercised within a period of six months from the date of resolution. The petitioner exercised such option on 17.07.2002 i.e. well within the time permitted. This position is more or less undisputed.

5.1 Only question raised by the respondents for opposing pensionary benefits to the petitioner is that she was permitted to retire on voluntary retirement basis with effect from 31.05.1998 and she did not retire on crossing the age of superannuation. It is therefore, the contention of the respondents that she is not covered by

the Government Resolution dated 06.04.2002. I am afraid the stand of the respondents cannot be accepted.

6. The Government made applicable the pension scheme by Resolution dated 06.04.2002 giving it a limited retrospective effect of 01.01.1997. All employees who are in service on 01.01.1997, but retired thereafter were given option to switch over to pension scheme. In the Resolution dated 06.04.2002 the Government has used the word “retired”. No distinction has been made between those who retired on crossing the age of superannuation and those who retired on voluntary retirement basis. The distinction as is sought to be made by the respondents through the affidavit-in-reply is not born out from the Resolution. Once the employee is permitted to proceed on voluntary retirement, unless there is specific reason treating the employee differently from one who is retired on superannuation, there is no possibility to treat the two separately.

7. In any case, in the Resolution dated 06.04.2002 issued by the State Government, no such distinction is envisaged. No subsequent clarification of the Resolution has been issued by the State Government providing that

employees retiring on voluntary retirement basis shall not be covered by the Government Resolution dated 06.04.2002. In that view of the matter, interpreting the Resolution dated 06.04.2002 as it stands, I find that it is not possible to draw any distinction between the employee who retired upon crossing the age of superannuation and one who was permitted to retire on voluntary retirement basis. One cannot lose sight of the fact that in case of the petitioner she had not tendered her resignation which would stand on different footing as compared to voluntary retirement. It may also be noted that the petitioner tendered her voluntary retirement offer which was accepted by the employer. It was a voluntary retirement in terms of service regulations and not pursuant to voluntary retirement scheme floated by the employer which would give additional benefits to the employees who would accept such voluntary retirement scheme as a package. The petitioner retired on voluntary retirement basis upon crossing certain age and upon completion of the prescribed minimum years of qualifying services. Her case therefore, cannot be kept out of consideration for payment of pensionary benefits. The case of the petitioner is clearly covered by the Resolution dated 06.04.2002 issued by the State

Government. Having exercised her option for switching over to the pension scheme within time permitted, the respondents cannot refuse to give pensionary benefits to the petitioner as per the rules and regulations. There is no dispute that the petitioner has put in sufficient number of years of service to qualify her for receiving pension.

8. In the result, I find that the petition is required to be allowed. By allowing the petition, it is therefore, directed that the respondents shall take further action pursuant to the option exercised by the petitioner on 17.07.2002 for switching over to the pension scheme formulated by the Government vide Resolution dated 06.04.2002. After adjusting the employer's contribution towards P.F., the pensionary benefits payable to the petitioner shall be released. Respondent No.4 shall supply all necessary details to the authorities so as to enable the authorities to complete the exercise expeditiously.

9. The question of interest on delayed payment of pension still remains. Against the pension she would be entitled to receive, she shall have to refund the

employer's contribution to P.F. as per the scheme. It would therefore, be just and proper to provide that the employer's contribution to P.F. which the State Government is entitled to receive, may be transferred to the State Government funds with cumulative interest up to 17.07.2002, however without any further interest calculated thereon, at the same time the petitioner will not be entitled to receive any interest on the delayed payment of pension provided that the same is paid within a period of four months from the date of receipt of a copy of this order. Any delay in releasing the pensionary benefits shall carry interest at the rate of 7% per annum to the extent of delay, beyond the above period till its actual payment.

10. In view of the above directions, the petition is disposed of. Rule is made absolute. No order as to costs. Direct service permitted.

[Akil Kureshi, J.]

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